**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL NO. 612 OF 1991**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

**POLICE CONSTABLE & ORS. - Appellant(s)**

**Versus**

**LAXMAN NARAN RABADIYA & ORS. - Respondent(s)**

==========

**Appearance :**
Shri Rajni H. Mehta for Appellant(s) : 1 - 3.
Shri Mehul S. Shah for Respondent(s) : 1 - 5.

==========

**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 05/09/2007**

**ORAL JUDGMENT**

The appellants, driver, owner and Insurance Company of Jeep No. GTL-8734, being aggrieved by the award dated 4th April, 1991

passed by the learned Motor Accident Claims Tribunal (Main), Kutch at Bhuj in M.A.C.P. No. 67 of 1984, are before this Court with a submission that the learned Tribunal below was absolutely unjustified in awarding a sum of Rs.2,07,000/- in favour of the claimants.

2. The appellants have confined their appeal to the extent of Rs.1,50,000/- only, meaning thereby, they are not challenging the findings of the learned Tribunal below in relation to rashness, negligence and liability of all concerned to pay the amount awarded in favour of the claimants.

3. Shri Rajni Mehta, learned Counsel for the appellants, submitted that as a joint appeal at the instance of the owner, driver and Insurance Company would not be maintainable, appellant Nos.1 and 2 be permitted to delete the name of appellant No.3 and the appeal may be heard on merits.

Let the name of appellant No.3 be deleted from the array of the appellants. Office is hereby directed to make necessary amendment in the original appeal memo within one week from today.

4. Shri Rajni Mehta, learned Counsel for appellant Nos.1 and 2, after taking me through the evidence and the findings recorded by the

learned Tribunal below, submitted that the learned Tribunal below was absolutely unjustified in holding that the yearly income of the deceased could be almost about Rs.40,000/- despite finding that he was studying in 12th Standard and was otherwise carrying out agricultural operations. He submitted that the deceased had some share in the joint family land admeasuring 9 Acres and some Gunthas. He submitted that from the total land, the yearly income could not be Rs.40,000/- and as there was no evidence to show that what was the value of the crops raised every year, the learned Tribunal was unjustified in holding that the income of the deceased could be Rs.3,300/- per month and further erred in holding that the dependency of the family was Rs.1,100/- per month. After taking me through the evidence, he also submitted that the learned Tribunal below was also unjustified in applying the multiplier of 20 (twenty) simply on the basis of the age of the deceased, less appreciating that the age of the dependents is also to be taken into consideration. According to him, if the appellants are aged persons and are above 50 years or the minor brothers and sisters would attend the majority within 5 to 6 years, then, in case of such appellants and minor dependents, the multiplier of 8 (eight) only has to be applied.

5. Shri Mehul Shah, learned Counsel for the respondents, on the other hand, submitted that in absence of any evidence contrary to the evidence led by the claimants, the learned Tribunal was justified in

holding the dependency to be Rs.1,100/- per month or Rs.13,200/- per year. He also submitted that in the present case, even if the multiplier of 20 (twenty) cannot be applied, the proper multiplier would be 13 (thirteen) and in this case, the learned Tribunal below in any case did not commit any mistake in awarding the amount.

6. It has come on record that the family of the deceased owned 9 Acres and some Gunthas of agricultural land, the deceased had a share in it. The case of the claimants is that the deceased was studying in 12th Standard though he was twenty years of age. If he was studying in the school, then, it could not be expected that the deceased devoted most of his time into the agricultural operations. If he was a full time agriculturist, then, whether he was studying in 12th Standard or so, would lose all its importance. The claimants have submitted that the deceased was helping and assisting them in the agricultural operations. If the income of the deceased from the agricultural operations only is to be taken Rs.40,000/- a year, then, from a small parcel of land admeasuring 9 Acres and some Gunthas, the share of others, including the parents and brothers, would cross more than Rs.2 lakhs. Adding the earnings of the deceased to that amount, it would appear that the family was earning Rs.2,40,000./- from a small parcel of 9 Acres of land. Any person, who even does not have knowledge about the agricultural operations, would not be able to believe that from 9 Acres, one can earn

Rs.2,40,000/- or almost about Rs.30,000/- per year from one acre land. This Court would be entitled to take a judicial notice of the fact that hundreds of farmers in various parts of the country have committed suicide because they are unable to repay the loan and are unable to earn much more from their agricultural operations. If the agriculture had been such a profitable profession or vocation, then, India still would have been surviving in the villages.

7. Taking into consideration the totality of the circumstances and the fact that the deceased had only one sixth share in the land, which was admeasuring about 1.5 acres, I am unable to hold that his yearly income could be Rs.40,000/- or the dependency could be Rs.1,100/-. The learned Tribunal below, in the opinion of this Court, was unjustified in holding the dependency to be Rs.1,100/- per month or Rs.13,200/- per year.

8. This Court is of the considered opinion that in case of a person who is not otherwise employed but is carrying out agricultural operations with other family members, the total income could not cross Rs.6,000/- to Rs.10,000/- per year. I assess the yearly income to be Rs.12,000/-, but, out of that, I would deduct two third as the deceased was unmarried and was to see the colours of life in the near future. The dependency would be Rs.4,000/- per year.

9. So far as the application of the multiplier is concerned, I would hold that in the present set of facts, the multiplier of 10 (ten) would be reasonable. Under the head of future loss of income, the claimants would be entitled to a sum of Rs.40,000/- only. The learned Tribunal below has awarded a sum of Rs.10,000/- under the head of loss of estate, the said head can at the best be said to be a misnomer because a sum of Rs.10,000/- was awarded under the head of loss of company and expectation of life. The learned Tribunal below was justified in awarding the amount under the head of obsequial ceremony and damages to the scooter. Out of the said amount of Rs.10,000/-, 2000/- and 4,500/-, I would deduct nothing on the ground that the deceased was negligent to the extent of 10%. I would also not interfere with the amount of Rs.2000/- awarded under the head of pain shock and suffering. Under the circumstances, the appellants would be entitled to a sum of Rs.58,500/-. If the appellants have paid the amount through the Insurance Company to the claimants, then, the Insurance Company, in view of reduced liability of the appellants, would be entitled to recover overpaid amount from the claimants. They would also be entitled to recover interest at the rate of 6% per annum from the date of deposit with the learned Tribunal below till realisation.

10. The appeal to the extent indicated above is allowed.

Looking to the facts and circumstances of the case, I would award no costs.

***[R.S.Garg, J.]***

*kamlesh**